

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD STEWART, No. Civ. S-05-0458 RRB KJM
Petitioner, Memorandum of Opinion
and Order
v.
M. SHEPHERD, Respondent.

Petitioner Edward Stewart ("Petitioner") is a state prison inmate proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging the Governor's decision to reverse¹ a decision by the Parole Board finding him

¹ Respondent M. Shepherd ("Respondent") notes that Magistrate Judge Mueller mistakenly characterized the Governor's decision as a parole "recession" instead of a parole "reversal." Because Respondent is correct in this regard, see In re Capistran, 107 Cal.App.4th 1299, 1304-05 (2003), the court will refer to the Governor's decision as a "reversal" rather than a "recession."

suitable for early release on parole.² On October 18, 2007, Magistrate Judge Mueller issued an order directing the parties to expand the record to include all the materials the Governor considered in deciding to reverse the Parole Board's finding that Petitioner was suitable for early release on parole. The order was issued pursuant to Rule 7(a) of the Rules Governing § 2254 proceedings on the basis that the additional materials were germane to the issue before the court and their review necessary "[i]n order to determine whether the Governor's determination comports with the 'some evidence' standard." Respondent now moves for reconsideration of this order pursuant to Local Rule 72-303(c) on the ground that a review of the entire record is improper under both the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254(d)(1), and the "some evidence" test set forth in Superintendent v. Hill, 472 U.S. 445 (1985).

Under Local Rule 72-303(f), a magistrate judge's order shall be upheld unless it is "clearly erroneous or contrary to

² In response to Petitioner's petition, Respondent filed an answer along with the following exhibits: (1) Exhibit A, the abstract of the judgment from Petitioner's 1981 murder conviction; (2) Exhibit B, the Sacramento County Superior Court's decision on Petitioner's state habeas petition; (3) Exhibit C, the March 13, 2002 transcript of Petitioner's parole hearing; (4) Exhibit D, a portion of the probation report; and (5) Exhibit E, the Governor's Indeterminate Sentence Parole Release Review.

1 law." Local Rule 72-303(f) (E.D. Cal. 2005). After careful
2 consideration of Respondent's brief and the magistrate's order,
3 the court finds that the magistrate's ruling was not "clearly
4 erroneous or contrary to law." Accordingly, Magistrate Judge
5 Mueller's October 18, 2007 order is AFFIRMED.
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7 IT IS SO ORDERED.
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ENTERED this 13th day of November, 2007.

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10 s/RALPH R. BEISTLINE
United States District Judge
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